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BEFORE THE ARIZONA CORPORATION C

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ARIZONA CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

SEP 30 2014

DOCKETED BY

PAC-WEST TELECOMM, INC.,
Complainant,
v.
QWEST CORPORATION,
Respondent.

DOCKET NO. T-01051B-05-0495
T-03693A-05-0495

STAFF'S STATUS REPORT AND
PROCEDURAL RECOMMENDATIONS

ORIGINAL

On July 13, 2005, Pac-West Telecomm, Inc. ("Pac-West") filed a formal complaint with the Arizona Corporation Commission ("Commission") against Qwest Corporation d/b/a CenturyLink ("Qwest") alleging that Qwest had breached the parties' interconnection agreement ("ICA") and seeking enforcement of the ICA. Specifically, Pac-West alleged that Qwest was required to pay reciprocal compensation to Pac-West for terminating Internet Service Provider ("ISP") traffic, including VNXX traffic and Qwest was not doing so.¹

In Decision No. 68820, the Commission found that Qwest was required to compensate Pac-West for terminating ISP calls, including VNXX calls, originated by Qwest. Qwest appealed Decision No. 68820 to the United States District Court of Arizona ("Arizona District Court"). The Arizona District Court found that the parties ICA amendment incorporated the definition from the *ISP Remand Order*,² which did not address VNXX traffic. The Arizona District Court remanded the matter back to the Commission to categorize VNXX traffic as either local traffic subject to reciprocal compensation, interexchange traffic subject to access charges, or traffic subject to some other form of

¹ VNXX traffic is traffic that originates and terminates in different local calling areas, and involves an ISP located outside the caller's local calling area.

² *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, 9153, 2001 WL 455869 (Apr. 27, 2001) ("*ISP Remand Order*").

1 intercarrier compensation. The Arizona District Court also encouraged the parties' to try to resolve
2 their dispute by mutual agreement.³

3 The Commission ultimately commenced a proceeding to consider the issues remanded from
4 the Arizona District Court. The schedule was suspended so that the parties could pursue settlement
5 discussions, which were ultimately unsuccessful. On April 4, 2013, Pac-West filed a Notice of
6 Bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy
7 Court, Western District of Texas, Austin Division, Case Number 13-10573-HEM. Since the parties
8 agreed that the automatic stay would prevent the Commission from taking action on Qwest's
9 counterclaims against Pac-West, the Docket was held in abeyance pending a request by either Qwest
10 or Pac-West to recommence proceedings, once the bankruptcy case concluded.

11 In the bankruptcy case, Pac-West sought approval to sell substantially all of its assets to TNCI
12 Operating Company, LLC ("TNCI"). Such sale was to include certain executory contracts between
13 Pac-West and Qwest and their affiliates. In a filing dated September 11, 2014, Qwest indicated that
14 there was an agreement entered into between Pac-West and Qwest and certain of their affiliates
15 which was memorialized in an August 5, 2013 Order of the Bankruptcy Court. The Court noted the
16 following at paragraph H on page 6 of its Order: "[a]fter substantial arms-length negotiations, the
17 Debtors, the Buyer, and the CenturyLink Entities have agreed to resolve the CenturyLink Entities'
18 Objections and other claims and disputes between them on the terms and conditions provided in this
19 Order and the Buyer Agreement." The Chapter 11 Plan became effective on July 1, 2014.

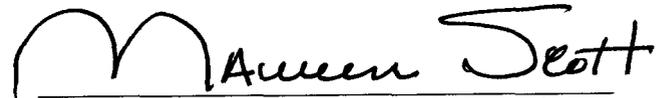
20 On September 24, 2013, Pac-West's counsel in this case filed a request to withdraw as
21 counsel for Pac-West in this case. He cited the impending sale to TNCI, the fact that he had not been
22 retained by TNCI, and Pac-West's failure to respond to his various attempts to communicate with the
23 Company.

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26 ³ Pac-West, Qwest and the Commission did not appeal the Arizona District Court's Order. Level-3, which had filed a
27 similar complaint with the Commission, and was subject to a similar Commission Order which was also addressed by
28 the Arizona District Court, did appeal the Arizona District Court's Order to the Ninth Circuit Court of Appeals. The
Ninth Circuit Court of Appeals found that Level 3's appeal was not ripe for consideration and dismissed it. Level 3
subsequently became a party to the remand proceeding before the Commission as well. Level 3 and Qwest eventually
settled their dispute.

1 On October 25, 2013, the Commission approved the transfer of Pac-West's assets and
2 customer base to TNCI in Decision No. 74153.⁴

3 Given the above, and Qwest's representation that the issues raised by the parties in this
4 Docket have been settled pursuant to the Bankruptcy Court's Order, the Commission should dismiss
5 the claims and counterclaims in this Docket with prejudice and this Docket should be closed.⁵

6 RESPECTFULLY SUBMITTED this 30th day of September, 2014.

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16 Original and thirteen (13) copies
17 of the foregoing were filed this
18 30th day of September, 2014 with:

19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Copy of the foregoing emailed/mailed
24 this 30th day of September, 2014, to:

25 Norman G. Curtright
26 CenturyLink, Inc.
27 20 East Thomas Road, 1st Floor
28 Phoenix, Arizona 85012
norm.curtright@centurylink.com

⁴ *In the Matter of the Joint Application of TNCI Operating Company LLC and Pac-West Telecomm, Inc. (Debtor-In-Possession) for approval of the Transfer of Customer Base and Assets, Docket Nos. T-20882A-13-0262, T-03693A-13-0262.*

⁵ Out of an abundance of caution, since TNCI was not a party to the Docket, the Commission could give TNCI notice of Staff's and Qwest's recommended disposition of this Docket and a period of 20 days to confirm that there are no outstanding issues or claims and that the complaint should be dismissed with prejudice. Staff has no reason to believe that TNCI would not agree.

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